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**File Code:** 1570/2400
**Date:** November 4, 2002

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**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

RE: Appeal #02-03-00-0034-A215, Viveash Fire Salvage, Pecos/Las Vegas Ranger District, Santa Fe National Forest

Dear «Title» «LastName»:

This is my review decision concerning the appeal you filed regarding the Final Environmental Impact Statement and Record of Decision (FEIS/ROD) on the project noted above, which provide for the salvage of fire-killed trees to provide saw logs, house logs, vigas, firewood, and other forest products through commercial timber sales, as well as personal use product permits and several independent road management actions.

## BACKGROUND

District Ranger Reddan issued a decision on July 24, 2002, for the Viveash Fire Salvage. The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations. Pursuant to 36 CFR 215.16, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached.

The Responsible Official elected to focus this analysis and decision on two separate and independent actions within the project analysis area, the Viveash Fire Salvage and some road management actions. The discussion on page ES-3 of the FEIS states, "These road projects are not connected to the salvage proposal. They are considered similar actions that when viewed with the salvage actions, have similarities that provide the basis for evaluating their environmental consequences together. The proposed road projects and salvage harvest will be analyzed in this EIS in order to adequately assess the combined impact of these similar actions."

My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have reviewed the appeal, the project record, interested party comments, and the recommendations of the Appeal Reviewing Officer. My review decision incorporates the project record.

**APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer concluded that: 1) decision logic and rationale were clearly disclosed; 2) the benefits of the proposal were identified; 3) public participation and response to comments were adequate; and 4) the Viveash Fire Salvage is in compliance with NEPA and other applicable federal laws and regulations. However, the Appeal Reviewing Officer found that the scenic environmental effects analysis and disclosure related to the independent road actions were insufficient to allow those actions to proceed without further analysis.

The Appeal Reviewing Officer recommended that the Responsible Official's decision related to the Viveash Fire Salvage be affirmed and that the independent road management decision be reversed for an additional scenic effects analysis [36 CFR §215.13(f)(3)].

**APPEAL DECISION**

After a detailed review of the record, the interested parties' comments, and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Viveash Fire Salvage and reverse the independent road management actions with the following instructions:

1) Proceed with the Viveash Fire Salvage, using the existing road system. Properly maintain the existing roads, in accordance with Forest Service Road Maintenance Standards.

2) Evaluate and disclose the scenic effects of the independent road management actions described on page 2-11 of the FEIS.

3) Upon completion of this analysis related to the independent road management actions, circulate the supplemental environmental document for review/comment and issue a new decision under 36 CFR §215.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR §215.18(c)].

Sincerely,

/s/ Abel M. Camarena
ABEL M. CAMARENA
Appeal Deciding Officer, Deputy Regional
Forester

Enclosure

cc:
Santa Fe National Forest
Pecos/Las Vegas Ranger District
R3, FFH
R3, Appeals & Litigation Staff
Forest Guardians
Forest Conservation Council
Carson Forest Watch
Wild Watershed
Mr. Herbert Cohen
Mr. Michael Murphy, et al.
Mr. Larry Ortiz
Mr. Albino Bustamante
Ms. Patricia Murphy

**REVIEW AND FINDINDS**

**of the**

**Forest Guardians'**

**Appeal #02-03-00-0034-A215**

**Viveash Fire Salvage**

**ISSUE 1:** The Viveash Fire Salvage fails to provide for the diversity of plant and animal communities in the planning area or insure the maintenance of viable wildlife populations as required by the National Forest Management Act (NFMA).

**Contention (1a):** 36 C.F.R. §219.26 requires a rigorous and comprehensive monitoring regime using Management Indicator Species (MIS). It mandates that hard quantitative population data be acquired and analyzed to determine the population trends of management indicator species. Additionally the Santa Fe has failed to establish baseline data for indicator species and failed to monitor the trend at ten-year intervals.

**Response (1a):** 36 C.F.R. §219.26 refers to Forest Planning and measures of diversity in the evaluation of plan level alternatives. It does not include project level analysis or mandate any monitoring requirements for MIS. Trends for indicator species are discussed in the Forest MIS analysis (Project Record (PR) #4.35), Viveash Wildlife Specialist Report (PR #4.34), and the FEIS for the Viveash Fire Salvage. (PR #7.2)

**Contention (1b):** In a recent ruling, Forest Guardians v. U.S. Forest Service No. CIV 00-714 JP/KPM-ACE, (McGaffey Case) the court found that the Forest Service must acquire and evaluate population trend data. It may not rely solely on habitat trend data as a proxy for population data or to extrapolate population trends. Population studies have not been done for the Viveash Fire Salvage and substitutes simple presences and subsequent "road-side" surveys for population quantification and trends. The Viveash Fire Salvage assumes that the status and population trends of MIS can be determined from species-habitat relationships. The Viveash Fire Salvage clearly failed in the NFMA required monitoring of actual populations of MIS to ensure species viability.

**Response (1b):** Although the McGaffey Case decision set the stage for MIS analysis in the Southwest, the more recent court ruling on the Center for Biological Diversity v. U.S. Forest Service No. CIV 01-1106 WJ/RLP-ACE (Corner Mountain Case) has defined MIS requirements in the 9th Circuit. "The Forest Service has discretion regarding the identification of the geographic area within which the effects of the environmental impacts are measured." Trends for indicator species are discussed in the Forest MIS analysis (PR #4.35), Viveash Wildlife Specialist Report (PR #4.34), and the FEIS for the Viveash Fire Salvage. (PR #7.2)

**Finding:** The Santa Fe National Forest has met the intent of the National Forest Management Act, with respect to providing for the diversity and maintenance of viable wildlife populations.

**ISSUE** 2: **The Viveash Fire Salvage is inconsistent with the Santa Fe Forest Plan.**

**Contention (2a):** The Forest Plan provides specific standards and guidelines for salvage logging projects and these require that "small sales will be the primary tool to accomplish salvage objectives." The FEIS states from one-fifth to one-sixth of the volume will be in small sales. This is inconsistent with the Forest Plan.

**Response (2a):** The appellant asserts that the Forest is violating the Forest Plan by offering only one-fifth to one-sixth of the estimated Viveash salvage volume as small sales. The Forest Plan states that the primary tool used to accomplish salvage objectives will be through small sales. The Forest Plan does not preclude the use of large sales on large burns. The Forest Plan does not specify the unit-of-measure to be used to determine if small sales are the primary tool. The unit-of-measure used to determine how well the Forest is doing in providing work to the local community could be just as easily based on the number of sales as volume. The unit-of-measure specified in the FEIS is based on volumes.

More small sales will be offered than large sales. A primary purpose of the salvage project is to capture the economic value in the fire-killed trees before it is lost. (Section 1.3-Purpose and Need, FEIS, p. 1-4) The proposed salvage project is expected to require 3-5 years to remove an estimated 25-30 MMBF of saw logs and 10,000 cords of firewood utilizing a mixture of large and small sales.

The Forest Plan does not preclude the offering of large salvage sales on large burns. The primary objective of the project would not be met (Purpose and Need, FEIS p. 1-4) if the project's potential harvestable volume were salvaged using primarily (based on volume) small sales earmarked solely for small operators.

**Contention (2b):** In addition, the Forest Plan states "salvage harvesting will conform to integrated stand management principles". The FEIS fails to disclose how this will be met.

**Response (2b):** The appellant asserts that the analysis failed to disclose how the proposed salvage harvest conforms to integrated stand management principles however, the appellant does not indicate where the proposed project or analysis fails to comply with these principles. Integrated Stand Management (ISM) was replaced with Integrated Resource Management (IRM) in the late 1980's and early 1990's (*Project Implementation Process for Integrated Stand Management*, third edition, August 1990). The IRM process was later incorporated into what is now known as Ecosystem Management (EM) (*An Ecological Basis for Ecosystem Management*, General Technical Report RM-246, May 1994).

The NFMA requires each National Forest to prepare a Forest Plan. Forest Plan objectives describe the desired future condition to be accomplished by various resource management activities (projects). The IRM-EM processes incorporate the NFMA, NEPA, public

involvement, and other legal requirements in project design. IRM-EM is more a philosophy than a cookbook or a laundry list of items to be checked off during project design and implementation. The IRM-EM process is a land management philosophy that recognizes that all natural resources are connected. The interdisciplinary approach used in the Viveash Fire Salvage analysis is based on this philosophy.

The analysis performed within the Viveash Fire Salvage analysis area and the resulting disclosure documents (ROD and FEIS) follow the principles outlined in the ISM-IRM-EM process. To date, the necessary Scoping, Analysis, and Environmental Effects Documentation of the Viveash Fire Salvage has been performed. Ultimately, Implementation and Monitoring will follow as outlined in the IRM process.

The Viveash Fire Salvage analysis and FEIS follow and incorporate the Guiding Principles of ISM outlined in the Forest Plan for the Santa Fe National Forest and later incorporated into principles outlined under the IRM and EM management philosophies. The appellant has not specifically stated where violations have occurred in the Viveash Fire Salvage analysis process. The interdisciplinary analysis process used in the development of the FEIS and ROD demonstrate that the principles behind ISM, IRM and EM were followed.

**Contention (2c):** The Viveash Fire Salvage also fails to abide by the limits of road density specified in the Forest Plan. The limit as defined in the Forest Plan is **1.5** miles per square mile of area, while alternatives would leave 2.3 miles per square mile after project completion.

**Response (2c):** The appellant asserts that the Viveash Fire Salvage fails to abide by limits on road densities specified in the Forest Plan. Table 3-2 (FEIS, p. 3-4) identifies current average road density within the project area to be approximately **2.8** miles/square mile. Road density ranges between 1.4 and 3.6 miles/square mile in sub-watersheds within the analysis area.

Page 5 of the ROD, pages ES-3 thru ES-5 of the Executive Summary, and page 2-11, Table 2-1 of the FEIS disclose that 1.5 to 2.0 miles of new road will be constructed to replace 5 miles of road along Willow Creek. In addition, one mile of reconstruction and realignment of FR92 will occur to move the existing road away from the Rito de la Osha stream channel. There will also occur 2.3 miles of road relocation of Forest Road (FR) 86 and decommissioning of 1.5 miles of an old road immediately adjacent to the creek in Tijeras Canyon. The FEIS also covers the decommissioning of 12.5 miles of the FR92V road network. Average road density in the analysis area following proposed roadwork will be **2.3** miles/square mile. (FEIS, p. 2-22, Table 2-3)

Approximately 43 miles of existing roads on the forests transportation system will be opened and used for salvaging burned timber. Current land management direction, regulation and law require that these system roads be repaired and maintained on a routine basis with or without the salvage sale project. The 43 miles of opened road will be closed following project activities. (FEIS, p. 2-7) No new road construction is proposed specifically for harvest activities. (FEIS p. 2-11)

Since the primary purpose of the project is to capture the economic value of fire-killed trees, (FEIS, p. 1-4, Purpose and Need) no new roads are proposed specifically for harvest activities, and because the salvage project, including additional roadwork not associated with the salvage work, will not increase the total miles of road existing within the analysis area, the Viveash Fire Salvage and associated road work do not violate the Santa Fe NF LRMP goal of 1.5 miles per square mile.

The road systems utilized in this project are consistent with the Forest Plan and relevant policy and direction. Quantification and description of the transportation network to be used in the Viveash Fire Salvage is found within the FEIS on pages 3-13 and 3-14, and pages 4-16 thru 4-18, and in more detail in Foster Wheeler's environmental document entitled, *Viveash Fire Area Final Road Analysis.* (PR #4.3) A description of separate road management actions analyzed is found in the FEIS pages 2-11, 2-12.

**Contention (2d):** The project's riparian areas do not meet Forest Plan standards for ground cover, shade, bank cover, streamside sedimentation, plant composition and crown cover.

**Response (2d):** The appellant asserts that project riparian areas do not meet Forest Plan standards. The Viveash Fire Salvage is not a riparian restoration project (Purpose and Need, Executive Summary, p. ES-1 or Purpose and Need, FEIS, p. 1-4). Pages 2-19 through 2-20 of the FEIS summarize the mitigation measures and best management practices (BMPs) to be used to protect soil and water. BMPs are identified in detail in Appendix A of the FEIS. The BMPs are derived from Forest Service Handbook 2509.2 *Soil and Water Conservation Practices Handbook*. Erosion and sediment control measures will vary based on the watershed analysis and field designation by the District Hydrologist. (FEIS, p. 2-19)

Mitigation measures specifically identified to reduce impacts on soils and water include a 35% limit on slopes, harvesting only on dry or frozen ground, and no-harvest streamside management zones of approximately 100-200ft on both sides of all perennial streams for riparian protection. (Mitigation Measures Common to All Alternatives-FEIS, pp. 2-19 and 2-20 and found in detail in FEIS, Appendix A)

The Viveash Fire Salvage is not a riparian restoration project. Numerous mitigation measures and BMPs have been established for use to minimize adverse impact from the salvage logging on both the soil and water resources within and down stream from the project area. A more detailed discussion of the BMPs to be used is found in Appendix A of the Viveash Fire Salvage FEIS. This project does not fail to meet LRMP riparian standards identified in the 1987 Santa Fe National Forest's Forest Plan as amended.

**Finding:** The Viveash Fire Salvage is consistent with the Santa Fe Forest Plan.

**ISSUE 3:** The Forest Service Violated Section 7 of the Endangered Species Act by failing to reinitiate formal consultation with the U.S. Fish and Wildlife Service.

**Contention (3a):** "The 1996 Biological Opinions and Forest Plan amendments both require that the Forest Service produce: 1) baseline imagery to monitor microhabitat; 2) annual microhabitat monitoring reports; and 3) design and implement an owl population monitoring program. Each of these requirements was to be fulfilled by November 25, 1997. Yet four years later, the monitoring program is stalled and shows no sign of moving forward."

**Response (3a):** Allegations concerning the Forest Plan and subsequent amendments for the Mexican spotted owl and requirements of the MSO Recovery Plan are outside the scope of this decision. A Biological Assessment (PR #6.6) was completed on effects to the MSO and its habitat. The U.S. Fish and Wildlife Service has consulted on the effects of the project and concurrence was granted. (PR #6.22)

**Contention (3b): "**There is no evidence to indicate that this project is consistent with the April 10 Biological Opinion's Area-Wide Mandatory Minimization Measures or those specific Mandatory Minimization Measures which apply to the Mexican spotted owl."

**Response (3b):** The Area-Wide Mandatory Minimization Measures, and Mexican spotted owl Species Specific Mandatory Minimization Measures identified in the U.S. Fish and Wildlife Service's April 10, 2001, Biological Opinion were developed for proposed Wildland/Urban Interface (WUI) Fuel Treatments, and as such do not apply to salvage sale operations.

**Finding:** The Santa Fe National Forest does not need to reconsult with the U.S. Fish and Wildlife Service because the assumptions used in finding that the proposed actions would not jeopardize the Mexican spotted owl are still valid.

**ISSUE 4:** The Forest Service is violating Section 9 of the Endangered Species Act by failing to comply with the terms and conditions of the 1996 Biological Opinions and the Recovery Plan for the Mexican Spotted Owl.

**Contention (4a):** The assumptions upon which these programmatic Biological Opinions were based are no longer valid and the Forest Service must immediately reinitiate formal consultation. Specifically, the Forest Service has failed to monitor the owl population. The Forest Service can no longer reasonably assure that the required owl protection standards are actually being implemented.

**Response (4a):** This is outside the scope of this decision, the U.S. Fish and Wildlife Service has been consulted on the effects of the project and concurrence was granted. (PR #6.22)

**Finding:** This issue is outside of the scope of this decision.

**ISSUE 5:** This project fails to meet the mandate of the Clean Water Act and the State of New Mexico's water quality standards.

**Contention (5a):** The Viveash Fire Salvage will increase the degradation of the Cow Creek by at least 11 percent, a stream that is already 303(d) listed as a Water Quality Limited Segment (WQLS) in clear violation of New Mexico's Clean Water Act anti-degradation policy.

**Response (5a):** There is no language in the State of New Mexico's Standards for Interstate and Intrastate Surface Waters or the anti-degradation policy that precludes or prohibits activities in WQLS streams. The project record contains evidence that the appropriate non-point source pollution considerations, including BMPs, were made during the planning process. The New Mexico Environment Department was consulted (PR #2.7, 6.1, 7.1) and provided input that was incorporated into the project design. (PR #6.9) Implementation of the BMPs described in Appendix A of the FEIS, along with BMP effectiveness monitoring will assure compliance with the Clean Water Act. (ROD, p. 7)

**Contention (5b):** Since Cow Creek has been listed as a WQLS, the Viveash Fire Salvage cannot proceed until a Total Maximum Daily Load (TMDL) plan has been developed and implemented.

**Response (5b):** A TMDL is a planning document that reviews the effectiveness of existing water quality protection measures and management strategies and develops new strategies if needed. For non-point sources, implementation of TMDLs is not regulated, but relies on states and other entities to implement BMPs to abate pollutant loads. The State of New Mexico has scheduled TMDL planning in this watershed to occur in 2017. In the meantime, BMPs will continue to be used on all Forest Service activities to assure compliance with the Clean Water Act.

**Finding:** Appropriate procedures were followed and adequate mitigation is planned for this project. There will be no violation of the Clean Water Act

**ISSUE 6:** NEPA Violation-The Project Record is Incomplete.

**Contention:** Comments by a Santa Fe National Forest fisheries biologist concerning impacts to native trout and its habitat are missing from the Project Record. These comments should be made available to public officials and citizens before decisions are made and before actions are taken.

**Response:** No copy of such comments was attached to the appeal. Other exhibits were attached to the appeal for review. The record shows that the Forest Fish Biologist was contacted for information and his comments were made part of the final fish biologist report.

**Finding:** The project record is complete with respect to this issue.